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Date 10-25-94

Signature [REDACTED]

SEP 13 1994

Employer Identification Number: [REDACTED]  
Key District: Baltimore, MD

Dear Applicant:

We have considered your application for recognition of exemption from federal income tax as an organization described in section 501(c)(6) of the Internal Revenue Code. We have determined that you do not qualify for exemption under that section of the Code. Our reasons for this conclusion and the facts upon which it is based are explained below.

The information submitted indicates that you were incorporated on [REDACTED], under the laws of the State of [REDACTED]. Your Certificate of Incorporation states: "Each [REDACTED] can be a member by paying dues, set forth by [REDACTED] bylaws for each restaurant unit owned." Your bylaws state that your objectives are (1) to engage in joint, voluntary action to improve the common business interest of your members within Areas of Dominant Influence, and (2) to share information among franchisees of fast food restaurants with the goal of improved quality of business operations. Your bylaws also state that you shall have only one class of members and that there shall be no limit on the number of members that you may admit; membership is not transferable or assignable. As qualifications for membership, your bylaws state: "Any restaurateur who [REDACTED]; features both a [REDACTED] inch diameter, heavily garnished [REDACTED] sandwich and a [REDACTED] sandwich; serves in a fast food configuration; usually has a drive-thru; has a speed of service criteria of three minutes or less; has a defined standard; and a reputation for a sandwich customization. A membership shall be issued to each Franchise Group, and or restaurant that has not been terminated by a court of law. No employee of the licenser, and or restaurant may be a member of the Corporation."

In your application, you state that you were formed to educate your members through meetings held throughout the year, and that the purpose of these meetings is to provide your members the opportunity to learn the latest developments in efficient, quality operations of a franchised restaurant. You state that

the emphasis is upon networking and presentations. You also state that in [REDACTED], you held an industrial trade show, attended by [REDACTED] members, with over [REDACTED] booths representing a variety of food service innovations. You expect the trade show to be a continuing event and do not expect it to expand significantly.

Section 501(c)(6) of the Code provides for the exemption from federal income tax of business leagues, chambers of commerce, real-estate boards, or boards of trade, not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(6)-1 of the Income Tax Regulations provides that a business league is an association of persons having some common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. It is an organization of the same general class as a chamber of commerce or board of trade. Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons.

Rev. Rul. 56-65, 1956-1 C.B. 199, holds that a local organization whose principal activity consists of furnishing particular information and specialized individual services to its individual members engaged in a particular industry, through publications and other means to effect economies in the operation of their individual businesses, is performing particular services for individual persons. Such organization, therefore, is not entitled to exemption under section 501(c)(6) of the Code as a business league even though it performs functions which are of benefit to the particular industry and the public generally.

Rev. Rul. 72-211, 1972-1 C.B. 150, clarifies Rev. Rul. 56-65, supra, and holds that an organization formed to promote the interests of its members and persons or firms related to the building and construction industry by providing a plan room and news bulletin available to the entire industry qualifies for exemption under section 501(c)(6) of the Code. The revenue ruling stresses that one of the main reasons for exemption is the fact that the organization's facilities are open for use by all individuals and businesses in the industry, nonmembers as well as members.

Rev. Rul. 73-411, 1973-2 C.B. 180, states that in the case of a chamber of commerce or similar organization, the common business interest is usually the general economic welfare of a community. Membership is voluntary and open generally to all

business and professional men and women in the community. The revenue ruling states that it has been accepted that an organization seeking exemption under section 501(c)(6) of the Code as a chamber of commerce or board of trade must be one whose efforts are directed at promoting the common economic interest of all the commercial enterprises in a given trade community. The revenue ruling also defines trade associations or business leagues as similar to chambers of commerce or boards of trade, except that they serve only the common business interests of the members of a single line of business or of the members of closely related lines of business within a single industry.

In National Muffler Dealers Association, Inc. v. U.S., 440 U.S. 472 (1979), the Supreme Court held that an organization that promotes a single brand of muffler is not exempt under section 501(c)(6) of the Code because it does not promote a line of business as required in the regulations. In this case, the organization initially confined its membership to dealers franchised by Midas International Corporation (Midas) and its purpose was to establish a group to negotiate unitedly with Midas management. Despite the fact that the organization later amended its bylaws to eliminate its membership restriction, it neither recruited nor acquired a member who was not a Midas franchisee. The Court stated that "an organization with a primary objective other than to benefit an entire industry and with a purpose to promote and give a competitive advantage to one product or one segment of a business cannot satisfy the line of business test." The Court further concluded that exemption under section 501(c)(6) is not available to aid one group in competition with another within an industry. The Court noted that exemption has been consistently denied by the Service to business groups whose membership and purposes are narrower than those that meet the "line of business" test in that they fail to benefit either an entire industry or all components of an industry within a geographic area. Examples of those denied exemption for failure to meet the "line of business" test include those that bottle a single brand of soft drink, market a single brand of automobile, or have licenses to a single patented product.

The information you have submitted shows that your membership is limited to restaurants owned by franchisees of [REDACTED]. Since your membership is not open generally to all businesses and professional men and women in your community, you are not a chamber of commerce, as explained in Rev. Rul. 73-411, supra. Since you are structured along particular industry or business lines, your right to exemption under section 501(c)(6) of the Code, if any, must rest on your characterization as a trade association or business league. Your application indicates that your primary activity is the presentation of information to

[REDACTED]

your members that will enable them to attain and maintain a competitive advantage over nonmembers. By providing your members with your specialized information, you are promoting their common business interest, but at the expense of every other individual or organization engaged in the operation of a fast food restaurant in your area which is not one of your members. Therefore, you are providing information only to one limited group of organizations, [REDACTED] franchisees, that are individually in competition with each other and, more importantly, in competition with other organizations within the same industry, fast food restaurants, which do not receive your information. As concluded by the Supreme Court in National Muffler Dealers Association, supra, exemption under section 501(c)(6) of the Code is not available for such organizations. As also discussed in Rev. Ruls. 56-65 and 72-211, supra, exemption under section 501(c)(6) relies on the presentation of services and information to an entire line of business rather than just to a select few within, or a segment of, a line of business.

Even if you modified or abandoned your membership limitation, there is nothing in your application to show even an indication that you would either intend to or be able to recruit or acquire any member other than a franchisee of [REDACTED].

For these reasons, we conclude that you do not qualify for recognition of exemption from federal income tax under section 501(c)(6) of the Code. You are required to file federal income tax returns.

You have the right to protest this ruling if you believe that it is incorrect. To protest, you should submit a statement of your views, with a full explanation of your reasoning. This statement must be submitted within 30 days of the date of this letter and must be signed by one of your officers. You also have a right to a conference in this office after your protest statement is submitted. If you want a conference, you must request it when you file your protest statement. If you are to be represented by someone who is not one of your officers, he/she must file a proper power of attorney and otherwise qualify under our Conference and Practice Requirements.

If we do not hear from you within 30 days, this ruling will become final and copies of it will be forwarded to your key District Director. Thereafter, any questions about your federal income tax status should be addressed to your key District Director.

[REDACTED]

When sending additional letters with respect to this case to the Internal Revenue Service, you will expedite their receipt by placing the following symbols on the envelope: CP:E:EO:R:4, Room 6236. These symbols do not refer to your case but rather to its location.

Sincerely yours,

[REDACTED]  
[REDACTED]  
Chief, Exempt Organizations  
Rulings Branch 4

cc: DD, Baltimore  
Attn: EO Group